

Overview of Americans with Disabilities Act

Issues for Consideration

by

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Presentation Agenda

- Briefing on State-Appointed Attorney ADA Training
- Clarification of Points
- Adjusting Expectations

State-Appointed Attorney

ADA Training Overview

State-Appointed Attorney ADA Training

- 2010 Armstrong II Amended Remedial Plan requires annual training for state-appointed inmate attorneys.
- Provides attorneys with information about:
 - Disabilities they may encounter with their clients
 - Issues they may face representing disabled clients
 - Properly documenting client ADA needs
 - Expectations to advocate for their clients' ADA rights
 - Remedies available if ADA rights were not sufficiently met

State-Appointed Attorney ADA Training

- **TOP 5 ISSUES:**
 - Comprehensive Risk Assessments
 - Ensuring Effective Communication
 - Advocacy on Insight
 - Making a Record
 - Advocacy on Parole Plans

Comprehensive Risk Assessments

Attorneys trained to:

- Discuss any information in CRAs they feel may be relevant to:
 - Necessary accommodations for their clients
 - The impact of disabilities on client's suitability.
- Raise appropriate objections at the beginning of the hearing regarding any ADA concerns they have with the risk assessments.
- Express agreement or disagreement as appropriate with CRA discussion on disability during objection or closing argument.

Ensuring Effective Communication

Attorneys trained to:

- Ensure effective communication between their client and the hearing panel members throughout the hearing:
 - Regardless of whether a staff assistant is present, attorneys are trained to interject if their clients appear confused or to educate the panel, when appropriate, on how best to communicate with their client.
- Meet face-to-face with clients refusing to leave cells or requesting waivers/stipulations/postponements, etc. to **encourage participation** or **ensure the client understands the consequences of their requests/the process of hearings in absentia.**

Advocacy on Insight

Attorneys trained to advocate/educate panels on the impact of a significant mental or cognitive disability on capacity for insight into life crime or factors contributing to criminality:

- Inmate may never fully understand or remember what happened, and may lack capacity to gain the same insight as someone without a disability.
- Inmate may have had a limited role in the crime, or was unduly influenced by crime partners.
- Insight may no longer be a relevant suitability factor
 - e.g. physical limitations, dementia.

Making a Record

Attorneys trained to:

- Document in DECS under “Source Document”:
 - All accommodations they provided to their client.
 - Any concerns they have or accommodations they believe will be necessary at the hearing.
- Ensure all disabilities and accommodations are addressed on the hearing record, including appliances brought by the inmate (glasses, cane, etc.).

Making a Record

Attorneys trained to:

- Raise objections or points of clarification to the hearing panels during the ADA review.
 - **Example:** If the attorney had a difficult time communicating with the client during the interview or feels that client is showing signs of cognitive decline such as dementia.
 - **Example:** For hearings in abstentia, provide a description of the client's appearance and physical condition to aid the hearing panel and to reflect this information in the hearing transcript.

Making a Record

Attorneys trained to:

- Ask clarifying questions or make objections to address how a client's disability may impact programming, insight, disciplinary reports, etc.
- Argue in closing statements how relevant suitability factors may be impacted by a client's disability.
- Advocate on the record any limitations a client has related to his or her disabilities and the expectations placed on the client at the previous hearing.
- Object to any unrealistic expectations the panel places on the client during the current hearing.

Advocacy on Parole Plans

Attorneys trained to:

- Address for the panel how a client's disability may impact the ability to secure own parole plans.
- When client has no definitive parole plans, raise viable parole plan options to the panel in the closing argument that may accommodate the client's needs and the panel's concerns.

Attorneys also trained on parole plan resources available including:

- DAPO Contract beds in transitional housing programs.
- County responsibility for medical needs of indigent residents.
- Potential eligibility for services from Department of Developmental Services for DDP inmates.

Points for Clarification

Conducting Hearings for ADA Inmates

Points for Clarification

- Ensure Accommodations
- Effective Communication
- Proper Documentation

Ensuring Accommodations

GOAL: For every identified disability, the panel must:

- Determine whether any accommodations are required to allow the inmate to fully participate in the hearing to the best of his/her ability.
- If so, take all necessary steps to ensure the accommodation is provided or that the inmate is providing the accommodation him/herself (e.g., bringing own glasses or hearing aids).

Accommodations - EXAMPLES

- **Vision Impairment:** Inmate may require:
 - Time to return to cell to obtain glasses/eyewear
 - Magnifying glass
 - Assistance with reviewing documents
- **Hearing Impairment:** Inmate may require:
 - Time to return to cell to obtain hearing aids or fresh batteries
 - Pocket talker
 - Hearing participants speaking loudly or slowly
 - Sign language interpreter, or over-enunciating/repetition if the inmate primarily relies on lip-reading instead of sign language

Accommodations - EXAMPLES

- **Mobility Impairment:** Inmate may require:
 - Extra breaks to stand/move/stretch
 - Staff to obtain a wheelchair if cane becomes no longer adequate
- **Medical or Mental Health Impairment:** Inmate may require:
 - Extra breaks to rest, obtain medications on schedule, obtain food if needed for medical reasons, or consult with attorney

Accommodations - EXAMPLES

- **Developmental Disability:** Inmate may require:
 - Extra breaks or attorney consultations to re-orient to hearing process
 - Panel speaking slowly, repeating/rephrasing questions, using simple, concrete language, etc.
 - Interjections from attorney or staff assistant to clarify panel questions or inmate responses

Effective Communication

GOALS:

- For the inmate to fully understand the information and questions from the panel to the best of his/her ability.
- For the panel to fully understand both the content and meaning of the inmate's responses.

Effective Communication

This May Require:

- Multiple attempts to repeat or rephrase questions
- Asking the attorney or staff assistant to help explain or rephrase a question
- Asking an interpreter to assist with communication
- Offering the inmate time to consult with attorney
- Asking for tips from other staff familiar with communicating with this inmate

Proper Documentation

GOAL: The Form 1073 should stand alone as the board's documentation of how all disabilities were accommodated or why no accommodations were needed for some or all identified disabilities.

Proper Documentation

- **Inmate waives/stipulates to unsuitability/postpones:** The ADA review should still be conducted prior to discussing the W/S/P and the Form 1073 should document all accommodations provided to assist the inmate during this discussion.
- **Inmate does not attend hearing or no longer requires accommodations recommended in the Form 1073:** OK to put “no accommodations” in the Form 1073, since none were needed; however, panel should also add in the notes section that the inmate did not attend, or no longer needs an accommodation, so it is clear why none were provided.

Adjusting Expectations

Determining Parole Suitability
for ADA Inmates

Adjusting Expectations

- Capacity to understand criminal/disciplinary conduct
- Ability to engage in programming
- Capacity to understand programming
- Capacity to articulate understanding of conduct or programming
- Importance of certain suitability factors

Capacity to Understand Criminal/Disciplinary Conduct

For identified disabilities, panels must:

- Determine whether the disability impacts the inmate's capacity to develop an understanding of the factors that led the inmate to commit the controlling crime or engage in disciplinary conduct while in prison.
- If so, take the disability into consideration when determining the impact of understanding (or lack thereof) on the inmate's suitability for parole.

Capacity to Understand Criminal/Disciplinary Conduct

EXAMPLE:

- Inmates with significant developmental disabilities, learning disabilities, mental illnesses, dementia, or other similar disabilities may, as a result of the disability, lack capacity to develop a significant understanding of the events of prior criminal/disciplinary conduct or the reasons for engaging in that conduct.

Ability to Engage in Programming

For identified disabilities, panels must:

- Determine whether the disability impacts the inmate's ability to engage in programming available in the institution.
- If so, take the disability into consideration when determining the impact of the inmate's programming (or lack thereof) on his/her suitability for parole.

Ability to Engage in Programming

EXAMPLES:

- Some programming may be unavailable to an inmate as a result of his/her disability
 - Institution may not have sign language or foreign language interpreters available for certain programs.
 - Medical impairment may prevent an inmate from attending certain programming.
 - Learning disorder may prevent an inmate from achieving necessary education levels to be eligible for certain job or vocation assignments.

Ability to Engage in Programming

EXAMPLES:

- Inmates receiving higher levels of mental health treatment in CDCR's mental health services delivery system may be unable to participate in institutional programs because they conflict with mental health programming.
 - Mental health programming documentation is contained in the eUHR, not the central file.

Ability to Understand Programming

For every identified disability, the panel must:

- Determine whether the disability impacts the inmate's capacity to understand the programming they have completed.
- If so, take the disability into consideration when determining the impact of the inmate's understanding of programming (or lack thereof) on his/her suitability for parole.

Ability to Understand Programming

EXAMPLE:

- Inmates with significant developmental disabilities, learning disabilities, mental illnesses, dementia, or other similar disabilities may, as a result of the disability, lack capacity to develop a significant understanding of information and skills they learn in their programming.

Ability to Articulate Understanding of Conduct or Programming

For every identified disability, the panel must:

- Determine whether the disability impacts the inmate's capacity to explain his/her understanding or application of the information/skills learned in programming.
- If so, take the disability into consideration when determining the impact of the inmate's ability to discuss programming (or lack thereof) on his/her suitability for parole.

Ability to Articulate Understanding of Conduct or Programming

EXAMPLES:

- Inmates with significant developmental disabilities, learning disabilities, mental illnesses, dementia, or other similar disabilities may, as a result of the disability, lack capacity to well explain the information and skills they learn in their programming, even if they fully understood it.
- Inmates with speech disorders, language barriers, hearing impairments, or interpreters may have similar difficulty explaining their programming.

Importance of Suitability Factors

For every identified disability, the panel must:

- Determine whether the disability impacts the importance of any factors of suitability or unsuitability in determining whether the inmate is suitable for parole.
- If so, take the disability into consideration when weighing the importance of those factors.

Importance of Suitability Factors

EXAMPLES:

- If an inmate is significantly medically disabled, a panel should consider this disability when weighing the importance of a lack of programming.
- If an inmate has a developmental disability, learning impairment, mental health impairment, dementia, or other similar disability, a panel should consider these disabilities when weighing the importance of a lack of insight or inability to express remorse.

Importance of Suitability Factors

EXAMPLES:

- If an inmate has become substantially medically or mobility impaired, a panel should consider this disability when weighing the importance of disciplinary conduct that occurred prior to the onset of the impairment.

**ANY
QUESTIONS?**